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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 4

PART II—Section 4

रक्षा मंत्रालय द्वारा जारी किये गये विधिक नियम और आदेश

Statutory Rules and Orders issued by the Ministry of Defence

MINISTRY OF DEFENCE

New Delhi, the 23rd June 1966

S.R.O. 142.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President hereby makes the following rules further to amend the General Provident Fund (Defence Services) Rules, 1960, namely:—

1. These rules may be called the General Provident Fund (Defence Services) Nineteenth Amendment Rules, 1965.

2. In the General Provident Fund (Defence Services) Rules, 1960—after Memorandum Explanatory of the General Provident Fund (Defence Services) Rules, 1960, the following Appendix 'B' shall be inserted namely:—

APPENDIX B

MEMORANDUM EXPLANATORY OF GOVERNMENT PROVIDENT FUND RULES *VIS-A-VIS* THE LAW ON THE SUBJECT

PREFACE

The object of this memorandum is to lay down for the assistance of officers called upon to administer the Provident Fund Rules, certain practical principles

which may be safely followed in their administration. The memorandum is not exhaustive and exceptional cases may arise which are not covered by these instructions, but it is hoped that it will be found useful in dealing with the generality of cases arising under the various Provident Fund Rules.

2. The memorandum does not cover the Railway Provident Fund Rules, and therefore its application to cases arising in connection with the administration of those Rules is limited to such provisions of the Railway Provident Fund Rules as are similar to those on the civil side.

3. It is hoped that the memorandum will be useful also to subscribers and that it will assist them to arrange for the disposition of their policies in a manner which will enable their families to realise provident fund deposits with the minimum of inconvenience and expense.

MEMORANDUM

It may be observed at the outset that the various Provident Fund Rules have been framed under Section 96-B of the Government of India Act, 1919, and that they have been kept alive under Section 276 of the Government of India Act, 1935, so far as they are consistent with the Act and are to be deemed to be rules made under the appropriate provisions thereof.

2. The rules come into contact with the law as regards—

(1) the protection of deposits,

(2) the power of disposition of deposits,

(3) the repayment of deposits on the death of the subscriber or depositor,

and

(4) life insurance policies and their assignment and re-assignment.

The Provident Fund Act itself and the statutory rules framed under the Government of India Act legislate for (1), (2) and (3), and the Indian Contract Act, the Transfer of Property Act, the Married Women's Property Act and the Insurance Act, 1937, govern the assignment and re-assignment of insurance policies.

3. *Effect of section 3(1) and 3(2).—The protection of deposits.*—The Provident Fund Act protects deposits both during the life time of and after the death of the depositor. Section 3(1) gives complete protection during the life time of the subscriber against creditors and also against Government save to the extent contemplated in Section 6 in the case of a Contributory Provident Fund. Section 3(2) deals with the protection of deposits *after death* and ensures that any sums standing to the credit of any subscriber to any Provident Fund at the time of his death and payable under the rules of the Fund to any dependant shall, subject to any deduction authorised by Section 6 (if the Fund is a Contributory Provident Fund), vest absolutely in the dependant free of any charge (including even succession duty). This protection does not extend to a person who becomes entitled to the Provident Fund money but is not a dependant. The payment to the dependants is, however, subject to any assignment or charge made prior to the Act unless the dependant is a child or widow of the subscriber, in which case even an assignment made before the 1st April 1926 will not prevail.

4. *Power of disposition.*—A subscriber after retirement from service is at perfect liberty to withdraw his deposits in a provident fund and deal with them as he pleases. While in service, however, he is entitled to and, as a matter of practice, required to make arrangements to dispose of his deposits by nominating some member or members of his 'family' to receive the money after his death (the word 'family' has been defined in the rules). A subscriber who has no family

can nominate any one he pleases but such a nomination will become void when he acquires a family. The legal position, briefly stated, is that a nomination made in accordance with the rules of the fund confers on the nominee an absolute right notwithstanding that the personal law of the subscriber might prescribe a different destination for the deceased subscriber's estate.

The legal effect of a nomination is stated in Section 5 of the Provident Fund Act. That Section requires careful reading. Section 5(1) by itself does not provide for any nomination to be made and does not by itself create any right in favour of the nominee. It merely gives protection and force to a nomination made in accordance with the rules of the Provident Fund. If, therefore, a rule exists in any Provident Fund Rules (as in Rule 26 of the State Railway Provident Fund Rules), rendering nominations invalid by marriage, or remarriage, nominations, even if valid when made, will become ineffective if a subscriber marries or re-marries and will not be nominations to which the protection of Section 5(1) of the Act will extend.

A nomination made under Section 5(1) of the Act must be a valid nomination in accordance with the rules in force at the time such nomination is made. There is always a risk that such nomination may lose its effect in the light of subsequent amendments or alterations of the rules. In order that there may be no doubt as to the validity of any nomination it is in the interest of subscribers to see that nominations are in accordance with the rules as they may stand amended or altered from time to time.

Section 5(2) merely extends the scope of the Indian Succession Act, 1925, and Bombay Regulation VIII of 1827 and enables nominees mentioned in Section 5(1) to claim succession certificates under these enactments [payment of such claims has also been provided for in Section 4(c)(1) of the Act].

A subscriber or depositor is permitted in his life time to draw on his deposits or subscriptions for payment of premia on a life insurance policy which is thus financed out of the general provident fund. The subject of life insurance policies is, however, sufficiently important to merit separate treatment in another section.

5. *Repayment.*—Sections 3(2) and 4 of the Provident Fund Act regulate repayment of Provident Fund deposits but the later section should be read in conjunction with the relevant provident fund rules governing the manner of distribution of deposits. Any sum payable under these rules to a member of the family of a deceased subscriber vests in such member under sub-section (2) of Section 3 of the Act and is payable to such dependant or, if such person is a minor or a lunatic, to the person authorised by law to receive it on his behalf. The person undoubtedly authorised by law to receive, on behalf of a minor, the sum payable is a guardian appointed by a court.

6. Under most of the Provident Fund Rules (except the Indian Civil Service and the State Railways Provident Fund Rules) the Provident Fund money must be paid in equal shares to the members of the family if there is no nomination or if the nomination is in favour of a person who is not a member of the family. If there is no family and the subscriber has nominated an outsider, payment is regulated under Section 4 (1) (b), if the total amount does not exceed Rs. 5,000, and under Section 4(1) (c) if the sum exceeds Rs. 5,000. The following examples illustrate how repayment is made under the General Provident Fund (Central Services) Rules.

Example 1.—There is a family and there is a nomination in favour of one member of the family. The money vests in the nominee and payment must be made to the nominee [see Section 3(2) and 4(1)(a) and the relevant Provident Fund Rules].

Example 2.—There is a family but there is no nomination in favour of any member of the family or the nomination is not valid under the rules. Payment must be made to all the members of the family in equal shares [see Section 4(1)(a) and the relevant Provident Fund Rules].

Example 3.—There is no family and there is a nomination in favour of a person who is not a member of the family. Payment will be made to the nominee if the amount does not exceed Rs. 5,000 [see Section 4(1)(b) and the relevant

Provident Fund Rules] but if the amount exceeds Rs. 5,000 payment will be made to such nominee only on production of a succession certificate, probate, or letters of administration [see Section 4(1)(c)(1)].

Example 4.—Where there is no family and no nomination in favour of any person, payment will be made—

(a) if the amount does not exceed Rs. 5,000 to the person appearing to the Accounts Officer to be entitled to receive it [see Section 4(1)(b)].

(b) if the amount exceeds Rs. 5,000 to the person producing letters of administration, probate or succession certificate.

An assignment of deposits by the subscriber made before the 1st April 1926 will be recognised to the extent contemplated in Section 3(2) of the Act even if there is a family, but this concession gives no relief to the assignee if the subscriber leaves a widow or a child.

7. *Life Assurance Policies and their assignment and reassignment.*—To enable Government servants to make more satisfactory provision for their families, particularly during the early years of their career when their subscription and the total amounts of their deposits cannot be large, Government have agreed to allow subscribers to finance policies from Provident Funds.

This decision was largely actuated by the consideration (i) that the maximum amount of the insurance provided under the Postal Life Insurance Scheme itself was not a high figure (Rs. 20,000) and (ii) that Government could not, while permitting policies under their own scheme of life insurance, refuse a right to take out policies with public companies. The result has been, however, innumerable references with regard to the legal aspects of the assignment and reassignment of policies necessitated by the fact that they are financed from the Provident Fund.

8. *Necessity for assignment.*—A policy of assurance on human life means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life or any instrument evidencing a contract which is subject to the payment of premia for a term dependent on human life. Loosely put, an assurance policy may be defined as a contingent contract between the assured person and the assurer under the terms of which payment of a certain sum of money is guaranteed on the occurrence of a certain contingency, namely the death of a subscriber or the maturity of the policy. The assured, if the policy matures during his life time, and the successors of the assured, if the policy matures on his death, have the right of claiming the proceeds of the policy from the assurance company. These policies, being as a rule actionable claims, are capable of being transferred. On a transfer, the transferee becomes entitled to the proceeds of the policy. Government permits the subscriber or depositor to pay assurance premia from the sum standing to his credit in his Provident Fund Account. Government also permits a favourable rate of interest as also certain other concessions for the benefit of the family of the Government servant in question. Money paid out of the Provident Fund to finance policies goes out of the Fund altogether and it is conceived that as regards succession, protection from attachment and like purposes the provisions of the Provident Funds Act do not apply to the policy or the proceeds thereof. With a vew to obtaining security for the moneys thus advanced Government insists that these assurance policies should be assigned to them. Government has also another object in view, namely to prevent the subscriber from trafficking in the policy, and to secure the proceeds of the policy, as far as allowed by the law, for the purposes for which the Provident Fund is designed.

It has been urged that a formal assignment is unnecessary and leads to legal difficulties and that the same object could probably be achieved if the policy were merely kept in deposit by the Accounts Officer. The legal position is that a mere deposit creates no legal right and that a title to a policy can only pass by means of a formal assignment as required by Section 130 of the Transfer of Property Act.

It has been argued that assignment is unnecessary because Government does not foreclose on the policy at any time. This does not seem to be a correct statement of the position. Normally, it is true, Government does not realise the

proceeds of the policy—to do so before maturity would be detrimental to the subscriber's interest except where the policy matures before the retirement of a subscriber and where the amount assured *plus* accrued bonuses is less than the whole of the amount withheld or withdrawn with interest. But in such cases it is clear that the policy money cannot be claimed in the absence of an assignment as the insurance company would refuse to pay, and to cover these cases assignment is essential.

A further criticism that has been levelled is that assignments do not secure Government against a covert assignment, which, it is suggested, can be effected by means of a separate document. There is no force in this criticism because the notice of assignment given to the insurance company concerned in every case would take precedence over any other subsequent notice that may be received.

It follows that if policies financed from the Provident Fund are not assigned difficulties will arise and the purpose for which Provident Funds were instituted may be defeated.

9. *Married Women's Property Act Policies.*—The Provident Fund Rules, therefore, rightly require the assignment of all policies excepting only a type of policy "expressed on the face of it to be for the benefit of the wife of the subscriber or of his wife and children or any of them". This type of policy is the very type defined in Section 6(1) of the Married Women's Property Act, 1874, which applied originally to all persons other than those professing the Hindu, Mohammedan, Buddhist, Sikh or Jain religions, and was extended to Hindus, Mohammedans, Sikhs and Jains with effect from the 1st December 1913 in Madras and from the 1st April 1923 in other parts of former British India. It is, therefore, correct to say that all policies except those covered by the Married Women's Property Act should be assigned to Government.

The reason for making this exception is not far to seek. A policy covered by the Married Women's Property Act "shall inure and be deemed to be a trust for the benefit of his wife and children or any of them according to the interest so expressed and shall not, as long as any object of the trust remains, be subject to the control of the husband or to his creditors or form part of his estate". The policy is at no time the property of the subscriber and he cannot assign it. It is true that if his wife and children join, the subscriber can assign the policy to Government. But as in most cases, the children are minors such an assignment is practically impossible. An assignment of a policy covered by the Married Women's Property Act being, for all practical purposes, impossible, Government has to be satisfied with some thing less than an assignment. The rules, therefore, require that such policies should be delivered to the Accounts Officer.

Deposit of the policy is less satisfactory than assignment. It creates no legal right in favour of the Government and the subscriber, his wife and his children if of full age can, acting together, transfer the policy to a stranger. Immediately such a transaction is discovered rule 26 of the General Provident Fund (Central Services) Rules, or the corresponding rule in regard to other funds, can be enforced. It is quite conceivable that a wife, in whose favour there is a statutory limit under this Act, may, when the policy matures, insist upon retaining the proceeds of the policy and refuse to pay it to the Fund. In that case Government, it is apprehended, will be without a remedy.

High Courts differ on the question what is a policy "which on the face of it is for the benefit of the subscriber's wife or of his wife and children or any of them". The ordinary endowment policy on the life of a subscriber is payable on the subscriber's death or at the age of 55 and is made payable to the subscriber's wife provided she survives the assured· failing her, to the assured, his executors, administrators or assignees. One High Court has held that this is not a policy for the benefit of the wife, that the wife is merely a contingent beneficiary and that the policy does not fall within Section 6 of the Married Women's Property Act. Another High Court, giving a more extended meaning to a "policy on the face of it payable to a wife etc." has taken the contrary view. In practice it is safer to accept the restricted meaning and insist upon assignment of all policies, in which the wife and the children take a contingent interest. After all, if the Supreme Court were to hold that policies of the contingent beneficiary type are covered by the Married Women's Property Act and that the words should be given an extended meaning, an assignment would merely turn out to be ineffective. The safest principle in dealing with this class of case is: when in doubt take an assignment. It can do no harm.

10. *Acceptability of policy.*—Though no legal point arises in connection with the acceptability of policies it might be of advantage briefly to mention the conditions which have to be satisfied before a policy is allowed to be financed from a Provident Fund:—

(i) the policy shall be one effected by the subscriber himself on his own life or on the joint lives of the subscriber and the subscriber's wife or husband (there are women subscribers).

(ii) The policy must be capable of being legally assigned by the subscriber to Government. The only exception are Married Women's Property Act policies, which have been dealt with in the previous paragraph. Without an assignment, that is a legal transfer of the claim, Government has no legal right to the policy as a security against the advance made from the Provident Fund.

(iii) The policy must be free from any prior charge or encumbrance though an exception is, however, made in the case of a policy which has already been assigned to the wife. But in such an event, it is necessary, either that the wife should be divested of her right in the policy by a formal re-assignment to the husband, or that both husband and wife should join in the assignment. A special form of assignment has been devised for this purpose. In all cases, therefore, the prior assignee must be divested of his rights before the policy can be accepted. The real point is that when a request is made for a policy to be financed from the Fund the interest in the policy which has been taken out must, if it is to be financed from the Fund, belong wholly to the subscriber. An exception is a policy to which the Married Women's Property Act applies. Policies financed from the Indian Civil Service Provident Fund are neither assigned to the President of India nor deposited with the Accounts Officer.

(iv) The policy must not be for the benefit of any person other than the subscriber, or his wife, or the husband of the subscriber, or the wife or husband and children of the subscriber, or any of them. The Provident Fund has been created in order that provision may be made for the support of the family in the event of the untoward death of the subscriber. The object of the fund would be defeated if the policy were so framed as to pass the benefit to an entire stranger.

(v) The policy should not be an educational endowment policy which falls due for payment in whole or in part before the subscriber's normal age of superannuation. It is the duty of a subscriber to provide for the education of his children before he reaches the age of superannuation.

11. *Assignments of policies.*—It has already been stated that all policies except those to which the Married Women's Property Act applies must be assigned. Such policies fall into the following classes:—

1. Policies in respect of which no prior assignment exists,

2. Policies in respect of which there is a prior assignment in favour either of a stranger or the wife;

3. Policies under which a subscriber and his wife or husband are jointly assured;

4. Policies not falling within the Married Women's Property Act, but in which the wife has a clear interest (as in a case where on the death of the subscriber the sum assured is payable to the wife and on maturity to the subscriber and his wife jointly).

For convenience, reference has been made to the G.P.F. (C.S.) Rules only.

(1) As regards the first class of policies an assignment in Form I to the Second Schedule would offer no difficulties.

(2) Where there is a prior assignment in favour of a stranger, however, the interest in the policy has passed to the stranger and it will be necessary, if legal title is to be passed to Government, for the stranger to divest himself of his right by a formal re-assignment of his interests to the subscriber. The subscriber must then execute a fresh assignment to Government in Form I. In cases where the policy was assigned to the wife it was the practice to treat her, as a joint assured and to make her join in the assignment to Government. The law officers disapproved of this procedure. They pointed out that the assured had already transferred his interest in the policy to his wife, and that it was doubtful, in the event of the death of the wife before maturity, whether the assured could claim payment to the exclusion of the heirs of the wife. They suggested either that the wife should re-assign the policy to the subscriber and the subscriber should then assign the policy to Government or that by a single assignment the wife should divest herself of her rights and agree to the subscriber assigning the policy to Government. In the interest of simplicity and convenience the latter course was adopted and Form 3 to the Second Schedule is the result. This step, however, has caused some degree of hardship to the widows of subscribers—a point which is discussed at some length in the section on re-assignment.

(3) Where a husband and wife are jointly assured and the interest on the policy passes to the survivor, it is clearly necessary that both parties should join in the assignment to Government and Form 2 has been provided for this purpose.

(4) In this class of cases also, it will be necessary for the husband and wife to join in the assignment to Government in Form 2.

12. *Notice*.—All Accounts Officers should bear in mind that notice of an assignment should always be given to the Insurance Company immediately after execution. This notice is very important, since under Section 38 of the Insurance Act of 1937 priorities will rank in order of notice, whereas at present priority is decided according to the date on which an assignment is executed. The Accounts Officers should either see that Notice of Assignment is promptly given by the subscriber or send the notice signed by the subscriber with a covering letter to the company and see that the letter is acqnowledged. It will be possible for the Accounts Officer to satisfy himself at the same time by an enquiry from the company that no previous assignment has been registered.

13. *Re-assignments*.—The various Provident Fund Rules require that a policy which has been assigned to Government should be re-assigned to the subscriber, beneficiary or to such person "as may be legally entitled to receive it". No difficulty arises in a case in which a subscriber and his wife are jointly assured or where they have a joint interest in the policy, and the husband and wife are joint assignors as the survivor in such cases as the surviving co-assignor, is legally entitled to have the policy re-assigned to him or her. In all other cases, however, where the subscriber dies in service the problem arises as to who is legally entitled to re-assignment. Though it is open to Government under the rules to re-assign the policy to whatsoever person it considers legally entitled to receive it, without probate or letters of administration or succession certificate, they follow this procedure entirely at their own risk as there is always the possibility that persons may later come forward as persons rightfully entitled to the proceeds of the policy and seek to fasten liability on Government for re-assigning it to a wrongful claimant. To be on the safe side, therefore, it is essential that Government should satisfy themselves in all cases that the person to whom they re-assign the policy is the person who is legally entitled to receive it and this can be achieved only on production of letters of administration, probate or succession certificate. This requirement, however, has given rise to some degree of inconvenience as production of legal representation involves the expenditure of an appreciable sum of money which in many cases may be out of all proportion to the balances standing to the credit of a deceased subscriber. To minimise the degree of inconvenience, therefore, it has been decided that where the amount is small and the claimant is the widow or a child of the subscriber and where there is other evidence to show that she is the heir to the estate, such as the fact that the rest of the estate and the provident fund money have gone to her and her children, the policy can safely be handed back to the widow without a formal deed of re-assignment. A letter would then be addressed to the Insurance Company stating that Government have no further claims against the policy and the company left to decide whether or not they should pay to the person who produces the policy on the evidence before them or on the production of legal proof of succession. Such a procedure has been criticised as in conflict with the

statutory rules which require a formal re-assignment. On the other hand, if the person who appears to be legally entitled to the policy is prepared to accept the policy without a formal deed of re-assignment Government cannot very well insist on a formal re-assignment, particularly as the claimant would thereby be committed to the expenditure of an appreciable sum of money. If however, an Insurance Company were to insist on a re-assignment of such a policy to the person legally entitled to receive it there would be no other alternative but to request the party claiming the policy to produce legal representation and on this being done to re-assign the policy to such person.

A reference has been made in paragraph 11(2) above to cases of hardship to widows of subscribers. This arises because, when a wife divests herself of rights accruing under an original assignment in order that the policy may be assigned to Government, the policy can only be re-assigned to her on production of proof of legal title; to obtain such proof in the shape of probate of a will, letters of administration or a succession certificate she has to pay heavy *ad valorem* fees.

It was the practice therefore to sanction an assignment by the subscriber in favour of his wife or children subsequent to the assignment in favour of the wife and subject thereto. It was apprehended that such a subsequent assignment would attract the provisions of rule 26 of the General Provident Fund (Central Services) Rules, but it was considered that, so long as the assignment was with the sanction of the Government, Government waived the enforcement of the rule.

This practice, however, should not be further countenanced, as an unobjectionable method by which re-assignment can be secured without production of probate or letters of administration has been devised and will be available to subscribers.

It is as follows:—

(i) Cancellation of the assignment in Form 1 in favour of Government if one is already in existence:

(ii) Execution of an assignment in favour of the subscriber and his wife as joint tenants in the following form:—

"I (here state name and description of the assured) do hereby assign and transfer the benefit of the within policy and all moneys receivable thereunder or in respect thereof to myself and my......(here state relationshipand name) *to Hold* the same unto myself and the said ....or survivor as joint tenants and I declare that on the death of either, the receipt of the survivor shall be a sufficient discharge to the Insurance Company within named.

Dated the day of 19

Witnesses:—

(1)

(2) (Signature)

and

(iii) Execution of an assignment by the subscriber and his wife or her husband in Form 2 in favour of Government.

Such an assignment has the effect of creating a joint tenancy in favour of the wife with the result that she is entitled to claim the policy in her own right as a surviving co-tenant on the death of the subscriber.

[Case No. CP(P)/4810/15487/D(Civ.II).]

K. V. RAMNAMURTHI, Dy. Secy.

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